

Message Text

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ORIGIN STR-07

INFO OCT-01 EUR-12 IO-13 ISO-00 AF-10 ARA-10 EA-10
NEA-10 OIC-02 AGR-01 CEA-01 CIAE-00 COME-00
DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15
STRE-00 /169 R

DRAFTED BY STR:MPOMERANZ:LC
APPROVED BY STR:AWOLFF
TPSC:WKELLY (STR)
OMMERCE:DSCHLECHTY
LABOR:GPRATT/RSCHULMAN
REASURY:JSCHOTT
OMB:LHAUGH
GRICULTURE:GWHITE
STATE:JSPIRO

-----030530 101839Z /40

P 101757Z AUG 78
FM SECSTATE WASHDC
TO USMISSION GENEVA PRIORITY
INFO AMEMBASSY BRUSSELS PRIORITY

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MTN

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: FUNCTIONAL GOVERNMENT PROCUREMENT CODE MEETING

1. WE AGREE TO POSTPONE ISAC FUNCTIONAL MEETING ON PRO-
CUREMENT CODE TO ALLOW TIME TO CLARIFY ASPECTS OF CODE THAT
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WOULD GENERATE OPPOSITION IF LEFT AS IS. GIVEN THE NEED
FOR TIMELY ADVICE TO THE ISAC'S WHEN SUCH MEETINGS ARE
SCHEDULED, WE ASK YOUR EARLIEST READING AS TO WHEN SUCH A
MEETING SHOULD BE HELD. GIVEN THE IMPORTANCE PRIVATE SEC-
TOR ADVISERS ATTACH TO A PROCUREMENT CODE, WE ARE DEEPLY
CONCERNED BY THE COMMISSION'S INABILITY TO SELL THE MEMBER
STATES ON THE COMPROMISE TEXT. ALTHOUGH THE COMMISSION

SEEMS TO REALIZE THE BALL IS IN ITS COURT, DEL SHOULD TAKE EVERY OPPORTUNITY TO IMPRESS ON EC THE NEED TO REACH AGREEMENT ON A TEXT ASAP IN ORDER TO FACILITATE COVERAGE NEGOTIATIONS.

2. RECOGNIZING THAT THE COMPROMISE CODE IS NOW IN DISAGREEMENT WE SEE THE OPPORTUNITY FOR WORKING THE EVENTUAL SOLUTION IN DIRECTIONS WHICH WOULD BE MORE RESPONSIVE TO OUR ISAC ADVICE AND BE MORE DEFENSIBLE WHEN WE PRESENT THE OUTCOME TO THE CONGRESS. WITH THESE THOUGHTS IN MIND WE HAVE THE FOLLOWING SUGGESTIONS FOR IMPROVEMENT OF SELECTED ELEMENTS OF THE TRANSPARENCY PART OF THE DRAFT.

3. PARA. 14(D) - IN SEEKING A DEFINITION OF "AN APPROPRIATE AND IMPARTIAL WITNESS NOT CONNECTED WITH THE PROCUREMENT PROCESS", THE DEL SHOULD ENDEAVOR TO HAVE THE DEFINITION CAST IN TERMS OF SOMEONE WHO HAS NO CONNECTION AT ALL WITH THE PROCURING GOVERNMENT (SUCH AS A REPRESENTATIVE OF THE INTERNATIONAL ARBITRATION ASSOCIATION) WHO WOULD BE ABLE TO ATTEST TO ALL BIDDERS THAT THE WINNER WAS IN FACT CHOSEN FROM ONE OF THE ENVELOPES OPENED DURING HIS PRESENCE.

4. WE BELIEVE THAT THE ESSENCE OF THE COMPROMISE WITH THE EC ON SINGLE TENDERING CAN BE MAINTAINED WHILE WE ACHIEVE TEXTS WHICH WOULD AVOID MISINTERPRETATION AND BE MORE LIMITED OFFICIAL USE

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PALATABLE TO OUR CONSTITUENCIES, THROUGH THE FOLLOWING CHANGES. IN THIS VIEW WE WOULD URGE THAT THE LAST THREE LINES OF PARA. 15(D) BE REVISED TO READ: "... INSTALLATIONS WHERE INTERCHANGEABILITY OR COMPATABILITY WITH ALREADY EXISTING EQUIPMENT IS ESSENTIAL AND IT WOULD BE IMPOSSIBLE TO DRAFT SPECIFICATIONS TO ACHIEVE SUCH INTERCHANGEABILITY OR COMPATABILITY USING EITHER OPEN OR SELECTIVE TENDERING." SIMILARLY OUR CONCERNS RE PARA. 15(E) CAN BE ELIMINATED WITH THE FOLLOWING REDRAFT: "FOR THE PURCHASE OF A PROTOTYPE OR FIRST PRODUCT DEVELOPED UNDER A PARTICULAR CONTRACT FOR RESEARCH, EXPERIMENT OR ORIGINAL DEVELOPMENT, SO LONG AS QUANTITY PRODUCTION IS NOT INVOLVED. QUANTITY PURCHASES OF THE PROTOTYPE OR FIRST PRODUCT WILL BE SUBJECT TO PARAGRAPHS 1-14 OF THIS PART."

5. PERHAPS THE MOST FLUID SITUATION OF ALL EXISTS CONCERNING PARA. 16 OF PART V AND ITS RELATIONSHIPS TO PARA. 7 OF PART VI. OBVIOUSLY IF THE BRACKETS AROUND THE LATTER COULD BE REMOVED, ANY PROBLEMS WE MIGHT HAVE REGARDING EX POSTE PUBLICITY OF SINGLE TENDERING AWARDS WOULD DISAPPEAR. ON THE ASSUMPTION THAT THE EC AND NORDICS WON'T

ACCEPT PARA. 7, WE MUST THEN CONSIDER SUCH AMENDMENT OF PARA. 16 WHICH WOULD BE NEGOTIABLE AND STILL PROVIDE A MINIMUM RESPONSE TO OUR NEEDS. FOR THIS PURPOSE WE OFFER THE FOLLOWING REVISION OF THE LAST SENTENCE OF PARA. 16:
"EACH SIGNATORY GOVERNMENT SHALL PROVIDE ALL SUCH REPORTS OF ITS ENTITIES AS PARTS OF AN OVERALL REPORT, TO ALL SIGNATORIES, AT LEAST ONCE EACH QUARTER UNLESS THE REPORT FOR A PARTICULAR PROCUREMENT IS REQUIRED SOONER UNDER THE PROCEDURES OF PART VI AND VII."

6. PERHAPS MOST IMPORTANT OF ALL IS THE PROBLEM OF PUBLICATION OF AWARDS (PARA. 4 OF INFORMATION AND REVIEW). WITHOUT KNOWING WHY THE MEMBER COUNTRIES WERE NOT ABLE TO

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BUY THE COMPROMISE WHEN PUT TO THEM BY THE COMMISSION, WE ARE LIMITED IN THE SUGGESTIONS WE CAN MAKE. HOPEFULLY THE MEMBER COUNTRIES WILL EVENTUALLY ACCEPT THE COMPROMISE AND PROVIDE AN ACCEPTABLE DEFINITION FOR WHAT WOULD "PREJUDICE COMPETITION IN FUTURE TENDERS". ALTERNATIVELY, YOU MIGHT BE SUCCESSFUL IN SELLING A SLIGHT REVISION OF PARAGRAPH 4 AS FOLLOWS: "UPON REQUEST BY ANY UNSUCCESSFUL TENDERER, THE PURCHASING ENTITY SHALL PROVIDE TO HIM PROMPTLY THE PERTINENT INFORMATION CONCERNING THE REASONS WHY HIS TENDER WAS NOT SELECTED. THIS SHALL INCLUDE INFORMATION ON BOTH THE CHARACTERISTICS AND RELATIVE ADVANTAGES OF THE WINNING TENDER AND, NORMALLY, THE NAME OF THE WINNING TENDERER AND THE CONTRACT PRICE. THESE LATTER TWO ITEMS MAY BE WITHHELD ONLY WHEN THE ENTITY DETERMINES THAT THE DISCLOSURE OF SUCH INFORMATION WOULD PREJUDICE COMPETITION IN FUTURE TENDERS. IN SUCH CASES, THE INFORMATION AND THE REASONS FOR WITHHOLDING IT SHALL BE FURNISHED TO THE GOVERNMENT OF ANY UNSUCCESSFUL TENDERER WHICH REQUESTS IT." SUCH A FORMULATION WOULD ESTABLISH THE NORMATIVE RULE OF PROVIDING THE INFORMATION. FURTHER, IT WOULD REQUIRE AN ENTITY TO JUSTIFY, IN WRITING, ANY WITHHOLDING OF INFORMATION, AND FURNISH IT TO THE GOVERNMENT CONCERNED RATHER THAN WAIT FOR A DISPUTE PROCEDURE. VANCE

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Status: NATIVE
Subject: FUNCTIONAL GOVERNMENT PROCUREMENT CODE MEETING
TAGS: ETRD, MTN
To: GENEVA
Type: TE
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